

Disputes between Multinational Enterprises and Workers in International Settings

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ABSTRACT

Under the development of globalization, more and more companies are expanding their business scope to all regions of the world. However, this has also exacerbated a series of labour rights problems including forced labour and fraud. This thesis analyses the reasons for the failure of some relevant laws and ideas for solving labour problems based on positive and negative cases. Firstly, the thesis introduces the origin of international labour law and describes the failure of international labour rights law in light of the current situation, and then further analyses the causes of its failure. Secondly, the thesis points out that the labour rights issue is a pluralistic legal issue based on the contradictions in the content of some labour protection systems and the failure of international labour law. In the next part of the paper, the first point is that the government should lower the threshold of labour rights, moreover, the legal department should increase the binding force of the law, then the society and the government should set up regulatory departments and supervise the enterprises to avoid labour rights problems. Finally, the thesis shows that nowadays trade between different countries or regions is becoming more and more frequent. The increase of labour rights problems seems inevitable, but after analysing the root causes of the problems, many countries and regions have made the right measures that other countries can learn from to develop.

Keywords: Labour issue, International labour law, Labour rights.

1. INTRODUCTION

Globalization refers to a process of developing the international exchange of people, capital, and commodities. [1] As globalization continues, the development and contours of these exchanges become more ingrained within our global economic order. One aspect of this economic order is the prevalence of Multinational Enterprises (MNEs) that establish subsidiary operations throughout the overseas market. These investments by MNEs in their subsidiary operations abroad can bring significant benefits to both the state hosting the activity ("host country") and the "home country" of the parent company. However, the power and influence of MNEs actions can sometimes rival and exceed the power of certain nation-states. The sheer size and power of these actors in our globalized

economic order then can also have outsized negative consequences. One area where the activities of MNEs can have detrimental impacts is on the international labour rights.

As is known to all, the importance of protecting labour right issues is getting more and more attentions by people among the world. The following parts of the paper will present the current global Status of labour abusing by showing a specific case, which is Foxconn, one of the Apple company's largest supplier in china. From this example, the paper can deduce that what are the general causes of labor abusing within MNEs. The two most commonly given answers are 'poverty' and 'globalisation'. Although each may be foundational to forced labour, both terms are typically used in nebulous, catch-all ways that serve more as excuses than explanations [2]. Furthermore, the paper has studied and

researched more than 100 papers online and books which focus on international laws and labour abuse, finally the paper chooses 20 papers as references. Most of the studies are focus on specific aspects on labour abuse world-wildly. There are disputes between different opinions aimed at how to solve the international labour law issues. This paper will discuss various solutions given by academics, researchers, policy makers about the possibilities and ways to solve the labour abusing issues from time to time. The solutions can be divided into three categories, which are the international Laws, the regional agreement which can be refer to the binding treaty and finally the domestic laws. Within domestic laws, four countries will be presented as successfully examples, which are France's Duty of Vigilance; Germany and Netherlands's Child Labour law and finally the Australia's Modern Slavery Act.

2. GLOBAL STATUS AND SPECIFIC CASES

In modern time, with the great impact of globalization, a plenty of companies have been internationalizing their businesses to foreign markets and growing to global brands [3]. Globalization brings significant benefits to both the Local Government and multinational companies (MNCs) such as high profits & low costs, more job positions to the unemployed and advanced techniques to the host states, however, it also causes some issues related to businesses and human rights (BHR), which permeate throughout some of the most pressing problems faced both by governments and businesses such as forced labor, debt bondage and frauds of contract labors. This part will aim to illustrate the observations of the present situation.

BHR issues range in a couple of ways such as the economic inequality, the protection of human rights in free trade deals and supply chain problems. As we know, supply and demand are the purpose of consumers and sellers, and many problems always exist in the supply chain because most companies cannot control their suppliers' behavior. From the last century to nowadays, the BHR issues have been highlighted in many years, for example, a company whose name is "FOXCONN" is the one of Apple's largest supplier in China, in which a large number of employees who worked for "Foxconn" committed suicides in many sectors, thus, those sectors can be defined as "supply chain abuse". However, there are many reasons to cause these things happen. Firstly, because of the high profit payback required by the "Foxconn" Company, it over-forced its employees to do extra work when receiving new orders from partner companies such as Apple. The workers' right to rest, which is a basic right set forth in Art. 43 of the PRC Constitution, is also expressed in positive laws, namely the 1994 Labor Law. [4] Besides, Article 41 of China's Labor Law stipulates that "due to the needs of production

and operation, the employer may extend the working hours after consultation with the Trade Union and workers. Generally, the working hours shall not exceed one hour a day. If it is necessary to extend the working hours for special reasons, under the condition of ensuring the health of workers, the extended working hours shall not exceed three hours a day and 36 hours a month." A Chinese academic commentary pointed out that "when a worker, after a day of exhausting work, can recover strength and maintain his or her healthy body only through rest, so that the workers can further engage in production." Otherwise, in the ILO's 1998 declaration on fundamental principles and rights at work, all members are bound to the ILO, and China is one of its members.

Secondly, according to a news from China business news, a 25-year-old male whose name is Sun Danyong, committed suicide by jumping from his apartment building in 2009. Matthew Taylor was given the job of reviewing modern employment practices, who had been quoted as saying that "if you want to control your workers, you will have to respect their rights and provide entitlements, too, but if you really don't want to control them, that's fine that they will be self-employed." According to the *Spring v Guardian Assurance plc* [1994] "a company has the duty to take care of its employees' health and safety." Obviously, Foxconn was totally ignoring those aspects, which broke not only the basic BHR but also the Business Law. From the example of Sun Danyong, Foxconn hurt his both physically and mentally, which caused his death directly. In Article 89 of China's Labor Law and Article 80 of the Labor Contract Law, provisions on the employers' liability for compensation if the rules and regulations directly related to the vital interests of workers violate the provisions of laws and regulations and cause damage to workers are regulated. In addition, the reports of NGOs and China's business news (*Di Yi Caijing Ribao*) provide clear evidences for the forced overtime labor.

In the above issues, there are too many things breaking the laws and violating human rights, of which Foxconn was an example. Thus, the UNGPs announced respect for human rights (BHR) as a firm's responsibility, which are not a legal obligation. All the companies must address the impact of human rights, which is directly linked with their whole company including operation, inventory and service. This is also a wider and more general duty of mutual trust, confidence and respect to the employment relationship. Moreover, employers have the duty not to act in manners that would jeopardize this relationship. After this part, a plenty of detailed solutions and ways for the present situations will emerge on how to solve problems and protect human rights (BHR) based on laws.

3. REASONS FOR THE INEFFECTIVENESS OF MEASURES TO PROTECT LABOUR RIGHTS AT THE INTERNATIONAL LEVEL

3.1. Analysis of the causes of the failure of international labour rights law

With the growth of global trade and the prevalence of multilateralism, the increased international movement of people has made the issue of labour rights around the world increasingly important. The international community urgently needed an organisation that could unify most economies to coordinate and arbitrate these disputes in order to protect the rights of all parties, and around the 1990s a large number of international arbitration bodies for economic and trade disputes were created and many measures were introduced. [5] Over time, however, these measures have revealed various problems. Analysing these ineffective measures from the perspective of society, the state and business, and tracing their root causes, we can understand the current dilemmas facing the protection of international labour rights. The human rights of workers feature prominently among these problems and the failure of earlier labour rights protection efforts to address this point of conflict. By comparing the relevant current international measures for the effective resolution of labour rights disputes below with actual cases, we can see that many cases of ineffective labour protection regulations have a precondition: These ineffective labour protection regulations are not supported by mandatory statutory law. [6] Due to the absence of codified laws with coercive force, the issue of human rights protection within companies in society for all their employees is limited to the level of social responsibility and, as a result, companies often choose to trample on human rights when faced with profit. Such a situation is not effectively supported by local laws for workers of the same nationality as the company, and international worker protection regulations, which have no real enforcement power, have even less practical impact and are therefore slowly becoming ineffective.

Among all the efforts to protect labor rights and interests, the International Labor Law is the first international convention with a complete labor law system that has legal benefits for its member countries. Analyzing from the external environment, the advent of the era of globalization makes the international labor law face the problems of inclusiveness and insufficient control effectiveness: first of all, the labor relations between multinational enterprises or organizations become more and more complicated, and there are a large number of local industries that do not meet the standards of international labor law but comply with the relevant domestic laws to seek a larger market to establish multinational business, while the existing legal

provisions cannot guarantee the binding force of the existing legal provisions cannot regulate the relevant issues with guaranteed binding force. Secondly, the issue of controlling the activities of transnational workers has not been strongly supported and updated by the relevant regulations. In addition, there are various differences between international organizations and other organizations that interfere to a certain extent with the implementation of labor protection, which affects the actual binding force of the International Labor Law. Apart from that, the issue of labor rights and interest protection is a diversified issue, which includes human rights, trade, investment, policy, environment and even national sovereignty, but the traditional international labor law is unable to integrate all the needs, especially in the coordination of national sovereignty of two countries in dispute, the International Labor Law, which is mainly based on nationalism, is basically inoperative. On the other side, from the end of the last century, the attitude of the International Labor Organization towards a large number of legislation began to change, because from a practical point of view, the content of international labor conventions is soft law in terms of legal definition and cannot produce substantial binding effect on member states, but can only be used as a reference, and their implementation depends more on the voluntary acceptance and implementation by sovereign states. Finally, the International Labor Law was established with reference to the labor law experience of a large number of western countries with relatively high economic level, and the protection for developing countries with low economic status that is obviously insufficient and lacking in relevance. Through the results of the above analysis, we can conclude that the International Labor Law is too old and the legislative roots are incomplete and other problems. In response to these problems, the future international labor protection organizations need to consider how to deal with complex labor relations and the relationship between various sensitive rights when formulating the content of relevant instruments, and rely on flexible arbitration mechanisms to solve problems while safeguarding the rights of all parties from infringement. [7] In addition, it should be considered that the International Labor Law is essentially a soft law and has no enforceability for actual cases in each country, so the future labor security institutions need to adjust their arbitration standards more in conjunction with national laws that have actual enforceability. For example, the collapse of a garment factory in Bangladesh and the mass suicides of employees at one of Apple's largest suppliers in China have led the ILO to see a growing need for mandatory hard law to make the provisions of labor rights protection more binding.

3.2 Analysis of the contradictions inherent in the RTAs' content on labour protection

In addition to the insights from the International

Labor Law, the recent emergence of RTAs (Regional Trade Agreements) has been found in practice to increase regional trade in RTA member countries, resulting in a steady decline in domestic labor standards and domestic regulation. For example, the frequency of RTAs involving labor provisions observed in RTAs concluded between the U.S. and the EU has been on the rise, so that some EU member states have had to legislate domestically to prevent firms from reducing labor benefits and to provide a backstop for workers' rights guarantees. Some countries, on the other hand, have chosen to reject the inclusion of labor standards in RTAs altogether, as an exception to free trade agreements between industrialized countries. The recent Japan-Switzerland agreement (2009) has a relatively strict formulation in this regard. In Article 101 of that agreement "The Contracting Parties recognize that it is inappropriate to encourage investment activities by relaxing domestic health, safety or environmental measures or by lowering labor standards. For this reason, the Contracting Parties shall not waive or otherwise derogate from such measures and standards in order to encourage the establishment, acquisition or expansion of investment. [8] In addition to this, the inclusion of labor provisions in RTAs may lead to "regulatory chill" or "race to the bottom" effects, such as in the ILO's Fundamental Principles and Rights at Work, which raises questions about the enforceability of existing provisions, as there are currently three types of international labor standards that are more dominant internationally: a commitment to work towards higher domestic standards, a commitment not to lower existing domestic standards, and a commitment to enforce existing domestic standards. However, if the country that lowers the standards is a high-income country, then the "commitment not to lower existing standards" will have the problem of enforceability and the low-income country will not be able to fulfill the "commitment to strive for higher standards". Therefore, as most of the organizations or enterprises conducting national or inter-regional trade, although the attention to labor rights protection in regional trade agreements has been further enhanced compared to the International Labor Law, the issue of labor rights protection is still a diversified legal problem intermingled with economics and sociology due to the complex inter-regional national sovereignty issues and the changing trade environment.

4. EFFECTIVE SOLUTIONS TO LABOUR RIGHTS ISSUES

In the face of the different situations of workers' rights around the world, a number of regions and countries have provided a number of effective solutions, from the corporate, legal and social standpoints, which have ultimately guaranteed and secured workers' rights, this part of the thesis will discuss effective measures by lowering the threshold of legal rights, increasing the legal

binding force, and legal promotion of companies to improve the corresponding assessment and management.

In 2017, French law adopted and established a "duty of vigilance" for companies, which provides a significant contribution to due diligence in France and the EU. The scope of the duty of care includes human rights, security and environmental factors. The France 'Duty of Vigilance' Law clearly states that anyone can ask a judge to order a company to comply with the law and that if the vigilance program is deficient or incomplete, the judge can ask the company to complete and strengthen it [9]. Besides, from a legal point of view, greater binding force is an important component of an effective solution to labour rights issues. Firstly, the high fines Under the Child Labor Due Diligence Act approved by the Dutch Senate, companies can be fined up to €8,200 for failing to submit a declaration that they have conducted due diligence if they face penalties for non-compliance. If a company fails to conduct due diligence or develop an action plan under the Act, or fails to comply with any other requirements relating to due diligence and action plans, it may be fined up to 10% of the company's global annual turnover. In addition, if a fine has previously been imposed for violating the same requirements of the Act in the last five years and the new violation was committed under the order or de facto leadership of the same director, the company may be subject to additional fines and the director may even be sentenced to up to two years in prison and £10,000 under the Modern Slavery Act in New South Wales [10]. Binding legal arbitration is reflected in imprisonment, in the Act, where repeated offenders are liable to a maximum of four years' imprisonment. Besides, worthy of mention and reference in other regions and countries is the Australian solution to modern slavery (MSA) [11]. In the Australian government's action against MSA, introduced in 2018 and first reported in 2020, the relevant government ministers have been tasked with holding "naming and shaming sessions". In these meetings, the Minister will make public cases of non-compliance and criticise specific companies, so that company executives will have to address the issue positively for the sake of the company's reputation and accumulated word-of-mouth [12]. The French "duty of care" has lowered the threshold for legal protection, while the Dutch Child Labor Due Diligence Act and the New South Wales Modern Slavery Act have gone some way to emphasizing the consequences of disciplinary breaches and are strengthening the binding nature of the law. In the face of the different situations of workers' rights around the world, a number of regions and countries have provided a number of effective solutions, from the corporate, legal and social standpoints, which have ultimately guaranteed and secured workers' rights, this part of the thesis will discuss effective measures by lowering the threshold of legal rights, increasing the legal binding force and legal promotion of companies to improve the corresponding assessment and management.

In past cases, many labour rights issues have been resolved within the company and, paradoxically, the person in charge of resolving the issue is often the same person who has caused the violation of the workers' rights [13]. This makes it impossible for these issues to be resolved independently and fairly from the outset. Complaints from workers are ignored, and even if they are accepted by the company, the only thing that can be done is to optimize some of the regulations, all on the basis that they do not affect the company's efficiency [14]. Therefore, it is very difficult to resolve labour rights issues from within the company alone. This leads to the conclusion that the practice of filing a complaint with a company as the only way to enforce a worker's rights should be prohibited. However, the underlying reason why internal settlements are a common phenomenon is the high threshold of access to the law, the lack of knowledge of the law and the lack of proactive assistance from the law.

Secondly, in the Australian Government's response to modern slavery, companies with revenues of \$100 million or more are required to report on the risks of MSAs in their operations and supply chains, and the actions they are taking to assess and address these risks [15]. This will make it mandatory for companies to include labour issues as an important part of their operations. Law and society should promote the assessment and management of a range of labour rights issues by companies in order to avoid the risks they pose. Without assessment and a range of forecasts, labour risks often arise from a number of sources, the first of which is the uneven recruitment requirements of third-party recruitment agencies at the outset of the recruitment process, which may lead to suppliers unknowingly breaching the law [16]. When companies do not have a proper assessment of working conditions such as environment and salary, they often get caught up in MSAs. Thirdly, the relationship between the supplier and the business partner, which is also a point of interest for the government. With the advancement and improvement of labour laws and regulations, and in line with the above, with the lowering of the legal threshold for workers and the increased awareness of their rights under the law, it is even more important for the relevant departments of the company to develop a labour risk assessment mechanism to help companies avoid labour problems by anticipating risks, pre-screening risks, forecasting risks and preventing risks. Global companies are now under increasing pressure from investors due to the overall environment in which consumers increasingly want to know more about companies, such as reputation issues, specific suppliers and transparent supply chains, and of course company public reporting [17]. Similarly, as social connections become more frequent and simpler, the impact of companies, large and small, on society is increasing, and as a result, governments are now expecting companies to be socially responsible and to

spread positive messages. Conversely, preparing a labour risk assessment report and improving it enables a company to send a message to the outside world that it has a stable and legal workforce and ensures the safety of its employees in all aspects of its business, which can be a source of reputation and consequent benefits to the company as a positive guide to avoiding business interruptions and reducing financial losses such as damages and fines [18].

After this, another effective solution is to subject companies to greater scrutiny and investigation in their overall operations. The California Transparency in Supply Chains Act makes it clear that companies should make public this information: Firstly, verify product supply chains to assess and address labour risks, including human trafficking and slavery; second, companies should audit their suppliers. Thirdly, companies need to provide direct proof that materials used in their company's products comply with the laws on slavery and human trafficking in the country in which they are located; fourth, maintain accountability standards and procedures for employees or contractors who do not meet the company's slavery and human trafficking standards; and fifth, provide staff and management training on slavery and human trafficking. When companies are subject to wider scrutiny, it is easier to identify and expose any problems with companies including labour rights, but this is not a pressure on companies, as with the development of information technology, the rules and operational details of companies will become more and more public, which is what all consumers want to see [19]. Widespread scrutiny and investigation will help companies to develop and update their rules to meet their legislative intent and secure their legal position. Likewise, widespread disclosure of accurate and understandable information will help companies to strengthen their position in the eyes of consumers and help them to gain support in dealing with legal issues such as labour rights. In addition to monitoring, due diligence on labour rights issues is also an effective way to address them. It helps a company to conduct a thorough investigation of its suppliers and other stakeholders on labour rights issues, to understand and screen them and to make them public. More and more countries are also promoting human rights due diligence (HRDD) coverage [20]. Corporate human rights investigations are already a well-established concept in Europe. France now has the Duty of Vigilance Act, while an increasing number of European countries are making due diligence part of their legislation. In a report by Heidi Hautala, Vice-President of the European Parliament, the due diligence practices of companies in what are probably the most egregious cases of labour rights were assessed. The results show that more than a third of companies in high-risk industries do not have any evidence that they are assessing human rights risks. This may not be happening only in Europe. The survey is

designed to reduce the incidence of labour rights issues in all industries by increasing transparency and disclosure of company information. When there is a risk of forced labour in a company's business, the HRR acts as an explicit prohibition to end forced labour, and eventually, as investigations become more detailed and legal, more and more companies will become fair labour providers, benefiting the company as well and raising its moral standards in society.

5. CONCLUSION

In conclusion, this paper addresses the issue of MNEs and labour abuse, the violation of human rights is often occurring in the subsidiary companies of MNEs among worldwide. First of all, the paper is a critical of the reason why the international laws were always breaking in the situation, which is the international solutions for labour abuse is unenforceable. Secondly, solutions among countries are controversial since a long term, and the decisions are still blurry. Last but not least, domestic laws occurring in independent countries seems to be the most effective solutions nowadays, successful and representative examples are France's Duty of Vigilance, Germany and Netherlands's Child Labour law and the Australia's Modern Slavery Act, these solutions should be imitated by other countries before the international Law introduces new valid and authoritative laws. In the process of the research, the paper realized that solving an international problem is a quite complicated and long-term progress. Countries around the world should learn from each other's policies and increase the opportunities for mutual communication.

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